

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

BADEN BADEN INC.,

COMPLAINT

Plaintiff,

-vs-

Civil Action No.

AUBREY DRAKE GRAHAM, and
OCTOBER'S VERY OWN MERCHANDISING
d/b/a OVO,

Defendants.

Plaintiff Baden Baden Inc. ("Baden Baden"), by its attorneys, Harris Beach PLLC, alleges as follows:

1. This is a Civil Action for copyright infringement under the copyright laws of the United States, 17 U.S.C. § 101 et seq.

PARTIES

2. Baden Baden is a corporation duly organized and existing under the laws of the State of New York with a principal place of business at 60 Orchard Street #6, New York, New York.

3. Baden Baden is the owner of the copyrights at issue in this Action.

4. Upon information and belief, at all relevant times herein, Defendant Aubrey Drake Graham ("Graham") is an individual residing in Canada.

5. Upon information and belief, at all relevant times herein, Defendant October's Very Own Merchandising ("OVO") is a partnership formed under the laws of the Province of Ontario, Canada with a principal place of business in Toronto, Ontario, Canada.

JURISDICTION AND VENUE

6. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1338(a) because this Action arises under the copyright laws of the United States, 17 U.S.C. § 101 et seq.

7. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1332 because there is diversity of citizenship between the Plaintiff and the Defendants, and the amount in controversy, without interest and costs, exceeds \$75,000.

8. This Court has personal jurisdiction over Defendants Graham and OVO because the causes of action arise from business transacted by them in this District, including contracts to purchase the copyrighted works that they have unlawfully copied.

9. This Court has personal jurisdiction over Defendant Graham because he has been and continues to be present in this State and has and continues to regularly conduct business within this State.

10. This Court has jurisdiction over Defendant OVO because it has done and continues to regularly do business within this State.

11. Venue is proper in this District under 28 U.S.C. §§ 1391 and 1400(a).

FACTUAL BACKGROUND

12. Baden Baden sells unique jewelry and other artwork created by Michael Raphael, the Chief Executive Officer of Baden Baden.

13. In about November 2012, Mr. Raphael, acting in his capacity as an employee of Baden Baden, created an original owl pendant (“the Owl Pendant Work”). A photograph of the Owl Pendant Work is attached as **Exhibit A**.

14. The Owl Pendant Work is the subject of U.S. Copyright Registration No. VA 1-858-166. A copy of the copyright registration is attached as **Exhibit B**.

15. Baden Baden has applied for a Supplementary Copyright Registration to reflect that the work was a work made for hire and that Baden Baden, by operation of law, is the owner of the copyright to the Owl Pendant Work.

16. Baden Baden sold a single original Owl Pendant Work to Defendant Graham, but did not authorize Defendants to reproduce the Owl Pendant Work.

17. Baden Baden delivered the Owl Pendant Work to Defendant Graham in December 2012.

18. Baden Baden tendered an invoice to Defendant Graham for the Owl Pendant Work. A copy of the invoice is attached as **Exhibit C**.

19. Upon information and belief, Defendants have without authorization reproduced, distributed copies of, and publicly displayed the Owl Pendant Work.

20. Upon information and belief, Defendant Graham uses the alias “champagnepapi” when posting materials on Instragram (<http://instagram.com/#>).

21. Upon information and belief, in about January 2013 Defendant Graham posted photographs of unauthorized copies of the Owl Pendant Work on Instragram. A photograph depicting unauthorized copies of the Owl Pendant Work is attached as **Exhibit D**.

22. Additional photographs of unauthorized copies of the Owl Pendant Work continue to appear on Defendant Graham’s Instragram page (<http://instagram.com/champagnepapi#>). A print-out of that page on June 10, 2013 is attached as **Exhibit E**. Copies of the photographs linked to on that page are attached as **Exhibit F**.

COUNT I
INFRINGEMENT OF BADEN BADEN'S COPYRIGHT TO
THE OWL PENDANT WORK
(COPYRIGHT REGISTRATION No. VA 1-858-166)

23. Baden Baden repeats and realleges each and every preceding paragraph as though fully set forth herein.

24. Defendants have infringed and continue to infringe Baden Baden's registered copyright in the Owl Pendant Work.

25. As a result of Defendants' acts of infringement, Baden Baden has sustained and will continue to sustain irreparable harm for which there is no adequate remedy at law and damages. Baden Baden is entitled to recover damages and Defendants' profits, but no less than the statutory minimum of 17 U.S.C. § 504.

26. Upon information and belief, Defendants have actual knowledge of Baden Baden's copyright in the Owl Pendant Work and willfully infringed Baden Baden's copyright.

WHEREFORE, Baden Baden respectfully requests judgment as follows:

A. Enjoining Defendants, their agents, servants, employees, and all other persons acting under their permission and authority, from infringing the copyrighted work, pursuant to 17 U.S.C. § 502;

B. Awarding Baden Baden damages in an amount to be determined at trial, constituting Baden Baden's damages together with Defendants' profits, pursuant to 17 U.S.C. § 504(b), or in the alternative, constituting statutory damages, pursuant to 17 U.S.C. § 504(c);

C. Ordering Defendants to deliver for destruction all copies of the Owl Pendant Work in Defendants' possession or control and all plates, presses, patterns, molds, printers, and other materials for making infringing copies, pursuant to 17 U.S.C. § 503;

- D. Awarding Baden Baden costs and reasonable attorney's fees, pursuant to 17 U.S.C. § 505;
- E. Awarding Baden Baden pre-judgment interest;
- F. Awarding Baden Baden interest on any judgment; and
- G. Awarding Baden Baden such other and further relief as the Court deems just and equitable.

JURY DEMAND

Baden Baden demands a jury trial on all issues so triable.

HARRIS BEACH PLLC

August 23, 2013

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